Nos. 93-517, 93-527 and 93-539

In the Supreme Court of the United States

OCTOBER TERM, 1993

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT, BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT and ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioners,

-against-

LOUIS GRUMET and ALBERT W. HAWK,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

REPLY BRIEF FOR PETITIONER BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT

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POINT I.

THE STATUTE WHICH CREATES THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT DOES NOT ON ITS FACE VEST DISCRETIONARY GOVERNMENTAL POWERS IN ANY RELIGIOUS INSTITUTION

Respondents and their *amici* argue that the statute which creates the Kiryas Joel Village School District contravenes the holding of this Court in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 127 (1982), which instructs that governmental powers may not be "delegated to or shared with religious institutions". Additionally, they contend that the resulting fusion of civil and religious powers is perceived as an endorsement of the separatist principles of the Satmarer, thereby violating the "primary effect" prong of *Lemon v. Kurtzman*, 403 U.S. 602 (1971). We respectfully submit that their analysis is flawed to the extent that they fail to distinguish between the acts of religious individuals and the acts of religious institutions.

A statutory delegation of civil power to the residents of an established political community which enables them to organize and conduct the affairs of government is very different from the delegation of civil authority to religious institutions within the community itself. The statute at issue herein is neutral with respect to religion and does not vest any discretionary governmental powers in any religious institution within the Incorporated Village of Kiryas Joel. Rather, in the best tradition of representative

democracy, it recognizes the right of those citizens most directly affected to local control and governance over the schools which their children attend.

In New York State and perhaps in most other jurisdictions within the nation, school board members are popularly-elected by residents whose children attend the schools within the community. In this respect, the election provisions in the statute creating the Kiryas Joel Village School District are hardly unique or worthy of note. Temporal authority is vested in a public school board consisting of seven trustees "elected by the qualified voters of the Village of Kiryas Joel" (Chapter 748 of the Laws of 1989, § 2). The Board "ha[s] and enjoy[s] all the powers and duties of a union free school district under the provisions of the education law" (Chapter 748 of the Laws of 1989, § 1). This, too, is consistent with New York's statutory scheme for smaller school districts.

Respondents and their *amici* advance the false syllogism that because all of the residents of the Village are Satmarer Hasids and because the residents elect the trustees of the school district, therefore the Village Rabbi or rabbinical authorities will *ipse dixit* control the secular activities of the Village School District. Other than the assertion that the Grand Rabbi expressed his personal preference from amongst the various candidates for school board office (undoubtedly a protected First Amendment right), there is absolutely no evidence in the Record below that rabbinical authorities have attempted to exercise any secular influence or control over the day-to-day operation of the Village School District. In any event, such an argument could be maintained within the context of an "as applied" challenge, but petitioners

herein only attack the facial constitutionality of the statute.

There are numerous political subdivisions in this country and more particularly in the State of New York where by reason of chance, geography or freedom of association, the great majority of inhabitants may share a common religious identification. Respondents would have this Court draw the presumption (for there are no facts to support it in the instant case) that where this occurs, the dominant religious group within such community will necessarily control the exercise of discretionary governmental functions of the political subdivision and thus impermissibly advance the religious interests of that denomination.

In *Clayton v. Place*, 884 F.2d 376 (8th Cir. 1989), *cert. den.*, 494 U.S. 1081 (1990), the Court of Appeals for the Eighth Circuit rejected the premise that school board members would not be capable of separating their religious beliefs from their civic obligations. The Court noted that "elected government officials are [not] required to check at the door whatever religious background (or lack of it) they carry with them before they act on rules that are otherwise unobjectionable under the controlling *Lemon* standard." (*Id.* at 380.)

Similarly, in *McDaniel v. Paty*, 435 U.S. 618, 629 (1978), this Court struck down a statute which disqualified ministers from seeking civic office as an unconstitutional burden upon their right to free exercise. The Court noted that "the American experience provides no persuasive support for the fear that clergymen in political office will be less faithful to

their oaths of civil office than their unordained counterparts". In this case, respondents would have this Court extend the unconstitutional burden to laymen having deep religious convictions, based upon the bald assertion that such individuals will be unable to separate their religious from their civic obligations.

The statute creating the Kiryas Joel Village School District does not on its face cede governmental responsibilities to the religious authorities of the Village of Kiryas Joel, nor does it conjoin political and religious functions in any religious institution. If the essence of respondents' constitutional objection is that the Satmarer will be in a position to make secular educational decisions in connection with educational programs affecting their own disabled students, how does this differ from governance in those other school districts where the great majority of inhabitants share a common religious heritage? In such instances, what percentage is the disqualifier? Would the statute be constitutional if eighty (80%) percent of the residents were Satmarer?

The statute is religion-neutral on its face. It vests civil authority in a community consisting of religious individuals but not in its religious institutions. The statute does not advance the religious precepts of such institutions in other than an incidental or indirect manner. Thus, the statute is constitutional in all respects.

Amici Committee for The Well-Being of Kiryas Joel and National Coalition for National Public Education and Religious Liberty have filed "lodgings" with this Court containing various rabbinical

proclamations and newspaper articles concerning alleged restrictions upon alienation of property within the Village. We respectfully submit that the contents of such lodgings are manifestly inappropriate and ask that they be stricken. In Stern, Gressman, Shapiro & Geller, Supreme Court Practice (7th ed., 1993), the authors note the impropriety of submitting "additional or different evidence that is not part of the certified record, such as an affidavit or an unsworn statement". (*Id.*, at 555.) While any attorney may "lodge" documents with the Court, such information must be of such a nature that the "Justices could take judicial notice of and refer to in their opinions as generally known facts" (*Id.*, at 556).

The documents contained in the various lodgings are clearly not the appropriate subject for judicial notice. They merely represent the private actions of certain individuals which lack the force and effect of law. What distinguishes a law from other pronouncements is that it "must be obeyed and followed by citizens subject to sanctions or legal consequences" (Black's Law Dictionary, 6th ed.). A law must have a binding legal force (*United States Fidelity and Guarantee Co. v. Guenther*, 281 U.S. 34, 37 [1930]). Assuming *arguendo* but not conceding the accuracy of the contents of such materials, any resident of the Village of Kiryas Joel is free to sell or rent his or her property as he or she sees fit. The proclamations are legally unenforceable, having only such force or effect, if any, as any resident may choose to impart to them. There can be no doubt, however, but that federal and state civil rights laws and fair housing laws would prevail over any attempt to enforce the proclamations. They have no greater effect than a religious tenet which requires believers to tithe for

the benefit of their church. An individual may comply or not, as his or her conscience dictates.

Various *amici* attempt to draw parallels between the Village of Kiryas Joel and the municipalities before the courts in *Oregon v. Rajneeshpuram*, 598 F. Supp. 1208 (D. Oregon, 1984) and *State of New Jersey v. Celmer*, 80 N.J. 405, 404 A.2d 1 (1979). In the latter cases, the Courts found a close and impermissible interrelationship between the religious organizations and civil governance, where the religious organizations owned all of the property within the political subdivision and thus determined who could and could not reside therein and where religious authorities actually exercised governmental powers. Whatever informal restrictions, if any, exist upon alienation of real property within the Village of Kiryas Joel are clearly unenforceable, because no legal sanction exists for their violation. Consequently, residents are free to dispose of their property as they see fit, for unlike *Rajneeshpuram* and *Celmer, supra*, there are in fact no restrictive covenants on such property or any other legal limitations upon who may or may not reside within the Village or upon how real property, including leaseholds, may be conveyed.

It should be noted that in *Oregon v. Rajneeshpuram, supra*, the Court specifically distinguished between instances in which the land within the political subdivision was communally-owned from those situations where the property belonged to private landowners, noting that "[t]he provision of services by a municipal government in a city whose residents are private landowners of one religious faith has the direct and primary effect of aiding the individual landowners and residents living in the

city. The effect on the religion of those private owners is remote, indirect and incidental."

The essence of local control is the vesting of civil authority in those individuals most directly affected thereby. Disqualification of a community consisting of individuals having deep religious convictions from this essential feature of representative democracy would constitute hostility to religion rather than neutrality to it and would place an unconstitutional burden on the free exercise rights of such individuals.

POINT II.

CHAPTER 748 OF THE LAWS OF 1989 DOES NOT EFFECT AN IMPERMISSIBLE DENOMINATIONAL PREFERENCE

This Court in *Larson v. Valente*, 456 U.S. 228, 252 (1982), has held that the various components of the *Lemon* test were "intended to apply to laws affording a uniform benefit to all religions and not to provisions ... that discriminate among religions". In the latter instance, this Court has stated that it will apply an Equal Protection "strict scrutiny" standard to determine whether the governmental action is "closely fitted to the furtherance of any governmental interest" *(Id.*, at 255). Respondents and various of their *amici* argue that Chapter 748 of the Laws of 1989 creates a denominational preference to the extent that it extends a benefit solely to the Satmarer Hasidim. Consequently, they argue, *Larson*, rather than *Lemon*, states the applicable constitutional standard.

The Minnesota statute before the Court in *Larson, supra,* exempted from state registration requirements those religious organizations which solicited more than fifty (50%) percent of their funds from non-members. Such a scheme, this Court noted, which "effect[ed] the selective legislative imposition of burdens and advantages upon particular religious denominations" *(Id.,* at 255), had established "precisely the sort of official denominational preference that the Framers of the First Amendment forbade" *(Id.).*

The holding of this Court in *Larson, supra,* is clearly inapposite. Chapter 748 of the Laws of 1989 does not create a denominational preference for the Satmarer Hasidim or for any religious denomination. The statute is on its face neutral with respect to religion and merely creates a school district coterminous with the boundaries of an existing governmental entity, Thus, *Larson,* which applied a strict scrutiny standard to "statute[s] or practice[s] patently discriminatory on [their] face" *(Lynch v. Donnelly,* 465 U.S. 668, 687, n. 13 [1984]), is clearly inapplicable.

Petitioner in its brief on the merits urged this Court to recognize that the creation of the Kiryas Joel Village School District does not have the primary effect of advancing the religious precepts of the disabled Satmarer Hasidic students. Rather, it facilitates their access to secular educational programs offered without regard to religion, upon terms and conditions which in some instances were inimical to the basic precepts of the Satmarer. The School itself has no religious mission. The benefits which the disabled students receive at the Kiryas Joel Village School District are coextensive with and certainly no

greater than those afforded other disabled students throughout the State. In fact, they are precisely the type of services offered to all disabled students as part of a special education program which "distributes benefits neutrally to any child qualifying as 'handicapped' under the I.D.E.A., without regard to the 'sectarian-nonsectarian, or public-nonpublic nature' of the school the child attends" *(Zobrest v. Catalina Foothills District,* U.S. ___, 113 S. Ct. 2462, 2467 [1993]).

Furthermore, *Wolman v. Walter,* 433 U.S. 229 (1977), instructs the religious homogeneity of the student body is not constitutionally impermissible, because the constitutional violation arises from the nature of a recipient institution, "not from the nature of the pupils" *(Id.,* at 248). The "neutral site" cases preclude the argument that the Kiryas Joel Village School District is unconstitutional despite its public nature merely because it serves the secular needs of students with a common religious heritage.

Since the legislation establishing the Kiryas Joel Village School District does not advance the religious precepts of the Satmarer, the statute cannot by definition create a denominational preference in favor of such sect. No religious group is impermissibly favored or preferred; rather, the disabled students of the Village are afforded access to programs and services to which all disabled students are entitled but within the context of a secular learning environment which is not perceived by them as hostile or inhospitable to their particular culture and traditions.

Significantly, the New York Court of Appeals clearly did not perceive the statute at issue to effect a

denominational preference, thus calling for strict scrutiny under *Larson, supra.* It determined the case, we submit incorrectly, solely by reference to the application of the second prong of *Lemon, supra.* Only Judge Kaye in her concurring opinion indicated that she would have decided the case by reference to the principles articulated in *Larson, supra.*

~~The statute~~ does not effect a denominational preference. It is neutral with respect to religion and does not have a primary effect of advancing the religious precepts of the Satmarer. Thus, application of a constitutional standard requiring strict scrutiny is inappropriate.

POINT III.

THE STATUTE REFLECTS A VALID PERMISSIVE ACCOMMODATION UNDER THE FIRST AMENDMENT

This Court in *Employment Division, Department of Human Resources v. Smith,* 494 U.S. 872, 890 (1990), recently endorsed the principle that it was permissible under the Establishment Clause for government to enact "nondiscriminatory religious-practice exemption[s]" in instances where the granting of such exemptions was not compelled by the Free Exercise Clause. While *Smith, supra,* generally restricted the availability of constitutionally-compelled accommodations on religious grounds from "valid and neutral law[s] of general applicability" *(Id.,* at 879), the decision recognizes that even in the absence of any constitutional basis for asserting a claim to an exemption where religious freedom is burdened by operation of a law of general

applicability, a legislature might nevertheless be solicitous of protecting religious belief through permissive accommodations in particular instances.

Indeed, Congress itself in the Religious Freedom Restoration Act of 1993, Public Law 103-141, 107 Stat. 1488 (1993), has replaced the accommodations previously available under the Constitution itself through the "compelling state interest" test articulated in *Sherbert v. Verner,* 374 U.S. 398 (1963), with statutory exemptions, (accommodations), in instances where "[g]overnment ... substantially burden[s] a person's exercise of religion even if the burden results from a rule of general applicability ... [unless government can establish that] the application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest" (R.F.R.A., §§ 3[a] and [b]). Clearly, Congress believed that there was sufficient room in the joints between the Establishment Clause and the Free Exercise Clause to structure statutory, non-discriminatory religious practice exemptions to relieve individuals from burdens upon free exercise absent a compelling government interest and the use of least restrictive means to address such interest.

Respondents and their *amici* suggest that an accommodation which enables the disabled Satmarer students to receive secular special education services at the religiously-neutral Kiryas Joel Village School by its very nature advances the religious precepts of such students and thus violates the second prong of *Lemon, supra.* This contention disregards two basic realities. First, the accommodation structured by the

statute was intended to address *nonreligious* reasons asserted by the Satmarer why their disabled students should not be compelled to attend the public schools of the Monroe-Woodbury Central School District, "most particularly because of the emotional impact on the children of travelling out of Kiryas Joel" *(Board of Education of the Monroe-Woodbury Central School District v. Wieder,* 72 N.Y.2d 177 [1988]). Secondly, the statute creates a secular learning environment through use of public employees at a site "not physically or educationally identifiable with the functions of a non-public school" *(Wolman v. Walter,* 433 U.S. 229 [1977]), and thus does not have the primary effect of advancing the religious precepts of the disabled Satmarer students.

Petitioner Board of Education of the Kiryas Joel Village School District in Petition Number 93-517 argues that separatism is not a religious tenet of the Satmarer. In support thereof, it points to various instances in which Satmar parents have for limited periods of time sent their children to public school programs. Petitioner Board of Education of the Monroe-Woodbury Central School District is clearly not in the position to evaluate the basic tenets of the Satmarer to determine whether their desire for separation is doctrinal rather than cultural. Petitioner, however, is familiar with the litigating position of the Satmarer in the *Wieder* case, *supra,* and recognizes, as did the Court of Appeals in its prior decision, that the reasons ascribed by the Satmarer for such separation were *nonreligious.*

Even were this Court to conclude that religious factors predominated in the refusal of the Satmarer to send their disabled students to the programs and

services offered by the Monroe-Woodbury Central School District, nevertheless this Court should regard the statute creating the Kiryas Joel Village School District as a permissive legislative accommodation designed to alleviate a burden upon their religious practice. Justice O'Connor in *Wallace v. Jaffree,* 472 U.S. 38, 83 (1985), recognized that a government might grant an exemption to religious observers though not compelled to do so by the Free Exercise Clause. In such instances, she suggested that it was "disingenuous to look for a purely secular purpose when the manifest objective of a statute is to facilitate the free exercise of religion by lifting a government-imposed burden". "A rigid application of *Lemon* would invalidate legislation exempting religious observers from generally applicable government obligations. By definition, such legislation has a religious purpose and effect in promoting the free exercise of religion". *(Id.,* at 82.)

In *County of Allegheny v. American Civil Liberties Union,* 492 U.S. 573 (1989), this Court in Footnote 59 acknowledged that the "scope of accommodations permissible under the Establishment Clause is larger than the scope of accommodations mandated by the Free Exercise Clause". Similarly, in *Corporation of the Presiding Bishop v. Amos,* 483 U.S. 327, 334 (1987), this Court again restated that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions". That such an accommodation by its nature may allow a religious institution to advance its own ends does not bring the statute into conflict with the second prong of *Lemon, supra.* "A law is not unconstitutional simply because it allows

churches to advance religion, which is their very purpose. For a law to have forbidden 'effects' under *Lemon*, it must be fair to say that the government itself has advanced religion *through its own activities and influence" (Id.*, at 337; emphasis supplied).

To the same effect is this Court's decision in *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 (1989), wherein the Court in Footnote 8 of the plurality opinion restated the proposition that not all benefits conferred exclusively upon religious groups on account of their beliefs were precluded by the Establishment Clause unless mandated by the Free Exercise Clause. A government may enact policies having a secular objective which have the effect of providing an incidental benefit to religious groups, where the government acts to relieve a religious individual of a "significant state-imposed deterrent to free exercise of religion" *(Id.*, at 14) in a manner which does not burden nonbeneficiaries markedly. See, also, the dissenting opinion of Justice Ginsburg from denial of a suggestion to hear the case *en banc* in *Goldman v. Secretary of Defense*, 739 F.2d 657, 660 (D.C. Cir., 1984).

Respondents contend that the permissive accommodation doctrine is inapplicable because co-petitioner Kiryas Joel Village School District has failed to "articulate the religious belief or practice infringed upon, the nature of the burden allegedly lifted by the statute and the particular circumstance through which government had imposed any such burden on the residents of Kiryas Joel" (Respondents' Brief at p. 27). Co-petitioner Kiryas Joel Village School District's unwillingness to ascribe a religious motivation for

its desire to separate its disabled students from a mainstream educational setting is understandable, since its position has consistently been that the necessity to separate its students arises from the Community's cultural, nonreligious desire to shelter its students from worldly, modern influences which would subvert the values which the Community holds to be central to its faith. This Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), acknowledged the propriety of an accommodation, in that instance compelled by the Free Exercise Clause, exempting the Old Order Amish from those aspects of the state's compulsory attendance law which threatened continued existence and physical survival of the community by subjecting its students to worldly, modern influences of the public schools, whose values were by their very nature inconsistent with and inimical to the insular traditional values of the Amish.

If this Court were to accept the premise that there were legitimate secular, nonreligious reasons for the enactment of the statute, further discussion with respect to the appropriateness of the religious practice exemption would be unnecessary. However, even if this Court were to find a religious basis for the desired separatism, there most certainly exists a significant government-imposed burden on the free exercise rights of the Satmarer. That burden lies in the discretionary authority vested in the Committee on Special Education of the Monroe-Woodbury Central School District under state and federal law to determine, at least in the first instance, where and how to serve the needs of the Satmarer disabled students.

Respondents advance inconsistent positions on the appropriateness of the accommodation. They argue first that the rationale for separatism is religious, to which petitioners respond that it is secular and arises from the culture and traditions of the Satmarer. When petitioners, deferring solely for purposes of argument, acknowledge the difficulty of separating the traditions from underlying religious practices, respondents then argue sophistically that petitioners have failed to identify which specific religious tenet is burdened by compelling the disabled students to receive instruction in the regular classes of the Monroe-Woodbury Public Schools.

In *Board of Education of the Monroe-Woodbury Central School District v. Wieder*, 72 N.Y.2d 174 (1988), the New York Court of Appeals rejected the Board's position that it could serve the needs of disabled Satmar students only within the regular classes of the public schools, just as it similarly rejected the Satmarers' position that the Board should be compelled to provide programs and services to their children separately but proximate to the nonpublic schools which such children attended. The Court held that the Monroe-Woodbury Board of Education was "neither compelled to make services available to private school handicapped children only in regular public school classes and programs, nor without authority to provide otherwise". (*Id.*, at 187.)

It is the exercise of judgment and discretion by the Committee on Special Education of the Monroe-Woodbury Central School District pursuant to federal and state law with respect to the manner in

which it chooses to serve the needs of their children which burdens the right of the Satmarer parents to secure programs and services for their disabled children in a manner perceived by them to be consistent with their culture and traditions. This government-imposed burden reflects Monroe-Woodbury's implementation of the doctrine of "least restrictive environment", which requires that its Committee on Special Education meet the needs of the disabled Satmarer within the regular classes of the public schools to the maximum extent consistent with their special needs, a choice which the Committee felt was compelled upon them by Title 20 U.S.C. §§ 1412 (5) (B) and 1414 (a) (1) (C) (iv) and its implementing regulations (Title 34 C.F.R. § 300.550 [b] [1] and [2]; § 300.552 [b] and [c]; and § 300.553), and also pursuant to New York Education Law, § 4402 (2) (a), its state law counterpart. The Committee thus declined to explore the suggestion of the Court of Appeals in *Wieder, supra*, that "certain of the services in controversy could be furnished to defendants at neutral sites if plaintiff determined to do so" (*Id.*, at 189, Footnote 3), because the Committee perceived such an approach to be incompatible with the Congressional mandate to educate students within the "least restrictive environment", *i.e.*, a public school setting.

In fulfillment of its statutory obligation, the Monroe-Woodbury Central School District need merely provide programs and services in an *appropriate* manner (Title 20 U.S.C. § 1413 [a] [2]; Title 34 C.F.R. § 300.1 [a]). If the particular program which the Committee on Special Education selects to serve the needs of a disabled child meets the standard of "appropriateness", the parent must then make a

conscious decision to accept the proferred program or to decline it. The judgment and discretion vested by law in the Monroe-Woodbury Committee on Special Education, coupled with its stated intention to secure the least restrictive environment (which in most cases will be a public school setting), effectively inhibits Satmarer parents from accepting programs and services for their children, thereby depriving them as a practical matter of the services which their disabled students desperately need.

A second government-imposed burden which can be identified is the traditional organizational structure under state law of the heterogeneous public school, to which the disabled Satmarer student brings a special vulnerability. The student is set apart immediately from his or her peers by culture, religion, language and manner of dress. Thus, it is simplistic to suggest, as does *amicus* Americans United for Separation of Church and State, that any burden arises from mere private conduct of insensitive non-Hasidic school children, rather than from governmental action.

We respectfully submit that the State of New York did not through its enactment of legislation creating a public school district coterminous with the boundaries of an existing incorporated village, advance the religion of the Satmarer. A permissible accommodation, suggests Professor McConnell[1], "merely removes obstacles to the exercise of religious conviction adopted for reasons independent of the government's action". The statute establishing the

1 McConnell, Accommodation of Religion: An Update and Response to the Critics, 60 Geo. Wash. L. Rev. 685, 686 (1992).

Kiryas Joel Village School District does not induce or favor the exercise of religion and is religion-neutral on its face. It lifts a burden on free exercise rights which enables the Satmarer to participate in public programs which provide secular educational services to the disabled, without regard to religion or the schools which such students attend. In fact, the services which the disabled Satmarer receive in the Village School are precisely those which are generally available to other disabled students. Furthermore, the effect of the statute and the accommodation effected thereunder upon nonbeneficiaries is minimal (Cf. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 [1989]).

Assuming *arguendo* this Court finds a religious underpinning to the Satmarers' demand for secular instructional services at a neutral site, this Court should nevertheless sustain the constitutionality of the statute as a valid permissive legislative accommodation which neither prefers nor advances the religious beliefs of the Satmarer, does not coerce third parties or place official pressure upon them to conform to religious practices and has very limited effect upon nonbeneficiaries. The constitutionality of the statute should be sustained.

CONCLUSION

For the foregoing reasons, the appeal should be granted, and an order of remittitur should be entered directing the Court of Appeals of the State of New York to enter judgment declaring the facial constitutionality of Chapter 748 of the Laws of 1989 of the State of New York.

Dated: Northport, New York
March 16, 1994

Respectfully submitted,

INGERMAN, SMITH, GREENBERG,
GROSS, RICHMOND, HEIDELBERGER,
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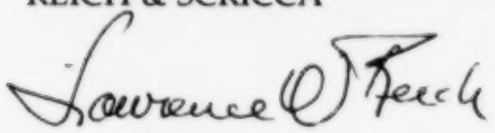

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